

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

KYLE B. DYSON,
629 Grayson Avenue
Richmond, VA 23222

Plaintiff,

v.

HENRICO COUNTY SCHOOL BOARD

Serve: Office of the County Attorney
Attn: Joseph Rapisarda, Jr.
Administration Building
Suite 330
4301 E. Parham Road
Henrico, VA 23228

Defendant.

Case No: 3:20-cv-547

Jury Demand

COMPLAINT

COMES NOW the Plaintiff, Kyle B. Dyson (hereinafter “Dyson” or “Plaintiff”), by and through undersigned counsel, Christopher E. Brown, Esq. of THE BROWN FIRM PLLC, and brings this action against Defendant Henrico County (hereinafter “Henrico” or “Defendant”).

PARTIES

1. Plaintiff Dyson is an African American male. Dyson was originally hired in 1985 as a Custodian. Since 1988 Dyson has been employed by Henrico Public Schools, as a Custodian I Supervisor.

2. Defendant Henrico County School Board (“Henrico or “Defendant”) is the governing body for the public schools in Henrico County in the Commonwealth of Virginia.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under 28 U.S.C. § 1331. The action under Title VII for retaliation is being brought per 42 U.S.C. § 2000(e) *et seq.*. The action under the ADA is brought per 42 U.S.C. § 12117(a). The action under Section 504 of the Rehabilitation Act is brought per 29 U.S.C. § 701 *et seq.*

4. Venue is proper in the Court because both the Plaintiff and the Defendants are within this Court's jurisdiction; the Plaintiff is still employed by Henrico County, VA.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

5. The conditions precedent to the filing of this action have been satisfied in that Plaintiff initially filed a Charge of Discrimination with the Equal Employment Opportunity Commission (hereinafter "EEOC"), based on race, color, retaliation, age and FMLA, charge number 438-2019-00058, on or about October 9, 2018, a copy of which is attached hereto and incorporated herein as ***Exhibit A***.

6. Additionally, on September 4, 2019, the EEOC issued Plaintiff a Notice of Right to Sue Letter, dated September 4, 2019, a copy of which is attached hereto and incorporated herein as ***Exhibit B***. Plaintiff filed suit on the Title VII claims within ninety (90) days of receiving the notice: 3:19-cv-893. Plaintiff exercised his right to take statutory nonsuit, which was entered on January 15, 2020. Plaintiff files this action within 6 months of his voluntary nonsuit.

STATEMENT OF FACTS

7. Dyson is a United States citizen of African-American descent, residing in Richmond, Commonwealth of Virginia.

8. Dysons graduated high school and has no college education.

9. Dyson began working for Defendant Henrico in August of 1985 as a Custodian.

1 10. Dyson was promoted to Custodian I Supervisor in 1988.

2 11. Dysons has committed 34 years of his life to serving Henrico County, his excellent
3 work is often recognized by the principals of the public schools to which he is assigned, and his
4 employment history is impeccable.

5 12. Dyson is currently earning approximately \$30,000.00 per year.

6 13. In 2018, Dyson earned approximately \$45,000.00, the difference being the overtime he
7 was regularly granted in 2018, before experiencing retaliation.

8 14. Mr. Dyson currently reports to James Smith (African American), Foreman, and he
9 previously reported to Greg Lawson (African American).

10 15. Mr. Dyson's second level supervisor is Mack Beaton (Caucasian), Career & Technical
11 Education Director.

12 I. TITLE VII VIOLATION – RETALIATION

13 A. *Dyson is Harassed by Subordinate*

14 16. Starting on or around 2014, Mr. Dyson supervised Edwina Bulls (African American),
15 custodial worker.

16 17. During the four years Mr. Dyson supervised her, Ms. Bulls bullied, harassed, and was
17 otherwise insubordinate to Mr. Dyson. This harassment and insubordination were enabled by his
18 supervisors, Mr. Beaton, Mr. Lawson, and Ms. Watson.

19 18. For example, on one occasion, while in front of administrator Betsy Pierce, Ms. Bulls
20 cursed at Mr. Dyson, called him a "n****r" (a racial epithet), and refused to do her job.

21 19. Mr. Dyson reported this behavior to his supervisors and James Smith, Ray McClain,
22 Beverly Godwin, and Harry Simmons in Human Resources ("HR"), yet Ms. Bulls was not
23 reprimanded in any way and this behavior continued.

1 20. After the “n****r” incident, having received no repercussions, Ms. Bulls acted as if
2 she were granted carte blanche by Ms. Godwin and Mr. Beaton in HR to say and do whatever she
3 chose.
4

5 21. Also during this time, Robbie Eastman, a building maintenance supervisor, proclaimed
6 himself a white supremacist and began calling Mr. Dyson “bud” and “buddy.”
7

8 22. When Dyson reported this degradation to HR representative Mr. Lawson, again nothing
9 was done.
10

11 *B. Dyson Reports Harassment, Is Punished and Threatened by Management;
12 Harassment Continues*

13 23. Mary Alderson, an HR representative, told Mr. Dyson to stop calling James Smith and
14 Ray McClain from Human Resources and went on to *write up* Dyson for complaining/reporting
15 Bulls hurtful language and insubordination.
16

17 24. A couple of days later, Angela Watson, building administrator, approached Dyson with
18 a writeup for him to sign, and said, “everything stays in the building and this is what happens when
19 you go outside the building to HR” (referring to his being written up).
20

21 25. Rather than reprimand Bulls for her harassment and refusal to do her job, Defendant
22 chose to punish and threaten Dyson for reporting her, placing documentation in his personnel file
23 concerning his conduct.
24

25 26. Each day Dyson would photograph Bulls’ incomplete work (proof of her
26 insubordination) and text and/or email building administration (Greg Lawson, Angela Watson)
27 about his concerns of Bulls not doing her job, all to no avail.
28

29 27. Bulls would regularly cuss at Dyson and talk back, refusing to do her assigned job
30 duties and informing him of what she was and was not going to do; management never stepped in
31 and repeatedly let her get away with it.
32

1 28. On *one* occasion Dyson was overheard using a curse word; he was written up
2 immediately.

3 29. Dyson had a series of meetings with Mr. Lawson and Ms. Watson to complain about
4 Bulls' behavior and ask for assistance in disciplining her. Rather than help to reconcile the
5 problem, Defendant chose instead to ignore the problem and encouraged Dyson to do the same.
6

7 30. Ms. Watson even told Dyson that "we don't want to see nothing" and to stop sending
8 the pictures and sending emails / text messages about Bulls' work. Ms. Watson then accused Dyson
9 of being hostile towards her.
10

11 31. In that same meeting Ms. Watson stated to Mr. Lawson that she was "sick and tired of
12 Dyson nit-picking about Bulls; we need to do something about him [Dyson]."
13

14 32. Ms. Bulls' refusal to do her job and being allowed to do so by management directly
15 impacted Mr. Dyson's ability to be an effective supervisor.
16

17 33. Defendant's refusal to take seriously Dyson's concerns about and complaints of
18 harassment left him with no choice but to try to resolve the issue externally.
19

20 34. On October 9, 2018, Dyson filed an EEOC Charge (#438-2019-00058), alleging
21 discrimination on the basis of race and retaliation for reporting Ms. Bulls to HR and his
22 supervisors.
23

24 35. On December 3, 2018, Defendant responded to Dyson's charge.
25

26 *C. Defendant Retaliates Against Dyson for Filing EEOC Charge*

27 36. Since the filing of the EEOC Charge, Dyson has been the subject of a number of
28 retaliatory actions:
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- a. Mr. Dyson has been removed from the Adult Education Center facility, which he had been assigned to for many years, and assigned to work at different buildings requiring him to travel all over the County to different schools.
- b. Dyson's overtime opportunities were stripped away; prior to filing the EEOC charge he would work approximately 32 hours of overtime each pay period. Following the filing of his EEOC charge, his overtime hours were abruptly changed to 0 (zero). No reason was given for this change.
- c. Mr. Dyson's regular work hours were also changed: before the EEOC charge was filed he worked 7:00 a.m. - 3:30 p.m.; following the filing of his EEOC charge, his hours were changed to 1:30 p.m. - 10:00 p.m. No reason was given for this change.
- d. Mr. Dyson has been denied computer access which he had prior to the filing of the EEOC charge.
- e. Mr. Dyson's new uniform was withheld.
- f. Mr. Dyson was effectively demoted, as his supervisory duties and responsibilities were stripped away.
- g. Mr. Dyson was shipped all over the county and treated like a part-time substitute rather than a dedicated employee of 34 years.

37. In November 2018, Dyson was experiencing a lot of stress due to the retaliation he was experiencing at work and began seeing a therapist. The attitudes and behavior towards him just seemed to have ramped up since he filed his EEOC complaint.

38. In one condescending exchange, Dyson felt Watson was trying to bait him into losing his temper – something he suspected was stereotypically expected of him if properly pushed.

1 Dyson, not wanting to fall prey to such tactics, requested of James Smith, the foreman, that he be
2 moved out of the building for the day; desperately, he pled with Smith, “get me out of this
3 building.” This was a request to be removed from what Dyson perceived to be a volatile situation
4 at that moment, not a permanent move. Yet, since that request was made, Dyson has not been
5 assigned to that building, his home school. Henrico has since used and relied on that request to
6 justify assigning Dyson to various schools around the county and its refusal to reassign him to that
7 original school.
8
9

10 39. Between November 2018 and the end of the winter break, Mr. Dyson worked only as
11 a custodial substitute and has been moved from one building to another each day.
12

13 40. On or around December 2018, Edwina Bulls retired.
14

15 41. On January 3, 2019, Dyson clarified with James Smith, the foreman, that he did not ask
16 to be transferred from his home building; he only requested to be removed from a situation where
17 he felt uncomfortable and threatened. Smith responded that he was “working on something for
18 [Dyson].”
19

20 42. In early January 2019, unbeknownst to him, Mr. Dyson’s security code to his originally
21 assigned building was deactivated. Learning about this deactivation was how Dyson discovered
22 that he was being officially taken off assignment to his home building; as opposed to a temporary
23 move, which Dyson felt would have certainly been over after Bulls resigned in December 2018, if
24 not sooner.
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26

27 43. Yet, once school reopened in January of 2019, Mr. Dyson was told by Kim Tiggle,
28 secretary, to return to his “old stomping grounds,” which would have been the Adult Education
29 Center (his “home building”). Mr. Dyson had expected that his workday would return to some
30 normalcy. Yet, when he arrived at the Adult Education Center as instructed, he was then told to
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1 go to Central Office, and Ms. Tiggles acted as if she had never told Mr. Dyson to report to his
2 “old stomping grounds.”

3
4 44. Mr. Dyson has been humiliated and stressed over his work situation for the past
5 several years, but particularly in the months leading up to Bulls’ retirement in December of
6 2018. He has submitted complaints about Ms. Bulls regarding her failure to perform her duties
7 which have been routinely ignored, leaving Dyson to do her job to ensure the schools are clean.
8

9 45. Rather than be recognized and rewarded for his dedication and commitment to
10 keeping the public schools clean, he is treated like a villain, an outsider, and retaliated against for
11 exercise his federally protected rights.
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13 *D. Defendant Further Retaliates Against Dyson by Refusing to Grant Reasonable*
14 *Accommodation or Worker’s Compensation*

15 46. This stress and the covering of Ms. Bull’s duties which she refused to perform, led to
16 Dyson hurting his back on April 8, 2019.
17

18 47. As a result of this injury, Dyson went to urgent care, and was directed to stay out of
19 work for two weeks. Dyson was using his accrued annual leave and/or sick leave for these days
20 off. On April 9, 2019, Dyson went to see his primary care physician, who diagnosed him with
21 strained muscles in his back. He contacted his foreman, James Smith, who told Dyson he needed
22 to fill out an accident report and advised this would be a worker’s compensation claim.
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25 48. Dyson filled out the report, but his employer continued to refuse to treat the issue as a
26 worker’s compensation situation. Dyson returned to urgent care for a referral, and they referred
27 him to OrthoVirginia, as they were the doctors who handled treatment of employees with
28 worker’s compensation claims.
29

30 49. On April 26, 2019 Dyson went to an appointment at OrthoVirginia with Dr.
31 Robertson and was placed on lifting restrictions to not lift objects over 15lbs for 6 weeks. Dyson
32

1 contacted his management to discuss his restriction, but was immediately rebuffed, and despite
2 the letter from Dr. Robertson, he was denied the opportunity to work – i.e. denied an
3 accommodation to work with the Dr prescribed restriction. Dyson was told to stay home, that he
4 could not work with the restriction in place, and this required Dyson to continue to use his
5 accrued annual and sick leave.
6

7
8 50. Dyson was seen again by Dr. Robertson on June 7, 2019, who stated Dyson may
9 return to work on Monday June 10, 2019, but on “light duty.”

10
11 51. Dyson was denied the opportunity to work with no consideration for accommodating
12 his “light duty” status, and remained home using his annual / sick leave.

13
14 52. Allowing/requiring Dyson use his accrued annual and sick leave may appear on its
15 face to be a reasonable accommodation for the situation, as Dyson is a custodian. However,
16 Dyson’s white coworkers who, upon information and belief, have not filed EEOC charges
17 against Defendant, and who share the same/similar job duties were granted accommodations that
18 allowed them to continue working and earning compensation. Yet Defendant refused to consider
19 allowing Dyson the same.
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21
22 53. Dyson is aware of several employees who receive accommodations from Henrico’s
23 Public Schools:

- 24
25 a. In September of 2019, Drew L. (Caucasian male) produced a Dr.’s note stating
26 he could not climb a ladder over 10’, which was part of his job. He was provided
27 accommodations which continue to this day.
28
29 b. Daniel L., (Caucasian male) assigned to Dumbarton Elementary, has a physical
30 impairment. The County accommodates his disability via a part time assistant
31 (Ms. Ellis) to help him complete his daily job.
32

1 c. "Faye" (Caucasian female), assigned to Ward Elementary, has seen the County
2 accommodate her disability, as she is often unable to complete tasks (kitchen
3 floor and cafeteria floor often remain dirty for weeks at a time) but is never
4 reprimanded.
5

6 d. Hani G., (Caucasian male) assigned to Johnson Elementary, left the country for
7 the summer, ran out of FMLA, but is still working today and was never
8 threatened with loss of the job.
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10 54. On June 10, 2019, Dyson returned to see Dr. Robertson who then placed Dyson on
11 restricted work status – not to lift anything greater than 50lbs, with no expiration of the
12 restriction at the time.
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14 55. Dyson contacted management to discuss his restriction and returning to work, but was
15 again immediately rebuffed, and despite the letter from Dr. Robertson, he was again denied the
16 opportunity to work – i.e. denied a reasonable accommodation to work with the physician
17 prescribed restriction.
18

19 56. On June 21, 2019, Dyson was seen again by Dr. Robertson, and told the doctor that
20 Henrico refused to allow him to go to work with the restrictions, and that he was using his
21 accrued annul / sick leave so he could get paid while off work. Despite the pain he was
22 experiencing, the doctor noted Dyson's work status as, "return to work full duty without any
23 restrictions on Monday June 24, 2019."
24

25 57. Dyson received a letter from Henrico County advising that his FMLA would expire on
26 June 25, 2019. As Dyson was using accrued annual/sick leave, it is unclear why that would be the
27 case. It appeared to Dyson that the Defendant was further retaliating against him for the filing of
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1 the EEOC charge, and trying to intimidate him. Dyson became fearful that Defendant would
2 unlawfully terminate his employment on the false basis that his FMLA expired.

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4 58. With his employer ignoring Dr. Robertson's recommendations for his work status, and
5 later recommendation that Dyson return with no restrictions (apparently because Dyson told him
6 he was going to lose his job if he did not return), Dyson returned in late June 2019 and suffered
7 through his workdays, further injuring his back.

8
9 59. The Defendant is aware of the ADA and provides accommodations to plenty of
10 employees.

11
12 60. The Defendant violated Title VII by retaliating against Mr. Dyson via refusing to
13 reasonable accommodation which they offered to other employees who have not, upon information
14 and belief, filed EEOC charges or complained of discrimination in the workplace.

15
16 **COUNT I**
17 **RETALIATION -- TITLE VII**

18 61. Plaintiff alleges and incorporates all the above paragraphs.

19 62. Title VII protects employees from retaliation by their employer for exercising
20 their rights under said Title.

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22 63. Plaintiff exercised his rights under Title VII by reporting what he believed to be
23 discrimination.

24
25 64. The Defendant failed to investigate the complaints of Plaintiff, left the entire
26 process in the hands of those against whom the complaints were made, thus nothing was done to
27 resolve the complaints.

28
29 65. The Defendant threatened Plaintiff in an attempt to dissuade him from filing
30 further complaints alleging violations of his federally protected rights.
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1 66. While the Defendant has policies against discrimination and retaliation in place,
2 those policies were not followed, not adhered to, and not enforced by the Defendant.

3 67. Defendant stripped Plaintiff of his supervisory duties and responsibilities,
4 allowing those he supervised to be insubordinate.

5 68. The Defendant then retaliated against Plaintiff by cutting his overtime hours and
6 converting (i.e. demoting) him into a low-level custodian assigned to travel all over the County
7 to fill in or otherwise cover various schools throughout the County; as opposed to the more
8 senior Custodians who are assigned to a specific school, resulting in a much more stable work
9 environment that does not require immense amounts of travel.

10 69. The Defendant further retaliated against Plaintiff by denying his reasonable
11 accommodation requests and worker's compensation

12 70. Plaintiff was disabled for purposes of the ADA when work restrictions were
13 placed upon him by a physician in 2019.

14 71. Plaintiff was otherwise qualified to perform the duties of the position.

15 72. Defendant refused to consider a reasonable accommodation for Plaintiff.

16 73. Defendant refused to meet with Plaintiff to discuss a possible accommodation.

17 74. Defendant refused to discuss alternatives merely requiring that Dyson stay home.

18 75. Defendant then threatened Dyson with the loss of his FMLA protections, when he
19 was using his personal accrued annual and sick leave while he was out of work until June 24,
20 2019.

21 76. Defendant has granted other employees with the same job duties with the
22 same/similar reasonable accommodations.

1 G. Order injunctive relief to protect others from the discriminatory practices and actions
2 of the Defendant which violate Title VII.

3 H. Order any and all other such other equitable and legal relief as the Court deems just
4 and appropriate.

5 **JURY TRIAL DEMANDED.**

6 Plaintiff demands a jury trial for this action.

7
8 Respectfully submitted.

9 **KYLE B. DYSON**

10 By Counsel,

11 **THE BROWN FIRM PLLC**

12
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